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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,492	06/16/2005	Christian Mathieu	2590-108	5402
23117 7590 12/28/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER BLATT, ERIC D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 12/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/519,492

**Applicant(s)**

MATHIEU ET AL.

**Examiner**

Eric Blatt

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10-11-2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed 10-11-2007 canceling claim 1, adding new claim 12, and amending claims 2-11 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 2-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-9 and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Drobnik et al. (US 7,041,048).

Regarding claim 12, Drobnik discloses a device for inserting implants in the form of cylinders of small diameter, comprising:

- device gripping means 134, a trocar (Drobnik's device is designed to be removably attachable to a trocar, so the full trocar is not shown attached to the device in the figures, but the proximal end 241 of the trocar is seen being fixed to the device in Figures 24 and 25; also see Column 9), said trocar being fixed at its proximal end 241 to the device gripping means, and a push rod 240 mounted so as to slide through the trocar and the device gripping means (Figures 4, 11, and 23; Column 9);
- the device gripping means include a rotary element 180 defining an axis of rotation parallel to the trocar axis (Figure 11) and the rotary element holds a plurality of tubular elements 238 (each strand of linked seeds is considered a tubular element; See Column 8, Lines 5-9) arranged around said axis of rotation and mounted so as to be able to be aligned successively with the trocar (Figure 11);
- said rotary element forming an integral part of the device gripping means (Figures 4- 10) and extending along most of the length of said device gripping means
- each tubular element being designed to contain at least one implant.

Regarding claims 2 and 3, Drobnik discloses:

- each tubular element forms a part distinct from the rest of the rotary element, and each tubular element can be inserted into the rotary element (Figure 23);

Regarding claims 4-9 and 11, Drobnik discloses that the device comprises:

- means 182 (Figure 16, Column 6, Lines 7-19) which prevent withdrawal of the tubular elements from the rotary element;
- a window 150 for viewing the passage of the implants which are located in the tubular element aligned with the trocar (Figure 12, Column 9, Lines 10-16);
- the gripping means have a flattened section (the exterior walls 134, 135 are smooth and do not have outward projections, and are thus considered flattened. See Figure 4);
- the rotary element comprises a knurled wheel 191 (Figure 6);
- each tubular element includes means for retaining the implants when the device is at rest (the implants are retained in the linked strands while the device is at rest);
- means 135, 136 which retain the rotary element and prevent withdrawal of the rotary element once the latter has been placed in the gripping means (Figure 12).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drobnik et al. (US 7,041,048) in view of Fluent et al. (US 4,223,674).

Regarding claim 10, all elements of claim 10 are disclosed by Drobnik as previously discussed except:

- the means for retaining the implants are composed of a flexible tongue (11) arranged inside the tubular elements (9).

The device disclosed in Drobnik is designed to allow strands of implants to be directly loaded into the rotary element without a separate casing around them. Fluent discloses that it is old and well known to first place a plurality of implants 18 into a cartridge 20 having a flexible tongue 19 and then to load the cartridge into an inserting device. (See Fluent, Figures 1, 1A, 2) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Drobnik by modifying the loading mechanism to receive cartridges containing implants, each cartridge containing a tongue to retain said implants, for purposes such as allowing the groups of implants to be handled more easily as taught by Fluent.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Fontayne, Diego Y. et al. (US 2002/0032360): Cartridge-moveable shield
- Lamoureux; Gary A. et al. (US 2007/0265487): Applicators for use in positioning implants for use in brachytherapy and other radiation therapy
- Sivert Eriksen et al. (US 2,620,796): Pellet injector
- Reed; Jack (US 2,761,446): Implanter and cartridge

- McNaughton; Allen D. et al. (US 4,400,170): Implanting device and implant magazine
- Dinius; Harold B. et al. (US 4,451,254): Implant system
- Gall; Russell A. et al. (US 4,871,094): Means and method for dispensing substances
- Ravins; Steven S. et al. (US 64,320,35): Fiberoptic-guided interstitial seed manual applicator and cartridge
- Yoshizumi; Lisa (US 6,572,525): Needle having an aperture for detecting seeds or spacers loaded therein and colored seeds or spacers
- Elliott; Daniel M. et al. (US 6,616,593): Automated radioisotope seed cartridge
- Green; Thomas C et al. (US 6,638,206): Methods and apparatus for loading radioactive seeds into brachytherapy needles

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is 571-272-9735.

The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric Blatt  
571-272-9735



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER